UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

LOCAL 951, UNITED FOOD AND
COMMERCIAL WORKERS INTERNATIONAL
UNION, AFL-CIO, CLC (Meijer, Inc.)

and Case 7-CB-14542

RUSSELL BLUNDEN, An Individual

Kelly A. Temple, Esq.,
for the General Counsel.
Jonathan D. Karmel, Esq.,
(*Karmel & Gilden*),
of Chicago, Illinois,
for the Respondent.

DECISION

Statement of the Case

PAUL BOGAS, Administrative Law Judge. This case was tried in Detroit, Michigan, on April 28, 2005. Russell Blunden filed the charge on November 19, 2004, and the Director of Region 7 of the National Labor Relations Board (the Board) issued the complaint on January 28, 2005. The complaint alleges that Richard Power, an agent of Local 951, United Food and Commercial Workers International Union, AFL-CIO, CLC, (the Union), threatened Blunden with loss of employment if he ran for union office. The Respondent filed a timely answer in which it denied the substantive allegations of the complaint.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the parties, I make the following findings of fact and conclusions of law.

Findings of Fact

I. Jurisdiction

Meijer, Inc., (the Employer), a corporation with an office and place of business in Grand Rapids, Michigan, is engaged in the retail sale of groceries and other consumer goods. In conducting its business operations the Employer annually derives gross revenues in excess of $500,000, and purchases goods and materials valued in excess of $50,000 that are shipped from points outside the State of Michigan directly to the Employer's Michigan facilities. The Respondent admits, and I find, that at all material times the Employer has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and the Respondent has been a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. Background

The Union is the exclusive bargaining representative for employees of the Employer's retail groceries in the State of Michigan. Blunden, the charging party, is a member of the Union who works at the Employer's store in Sterling Heights, Michigan, as a "grocery receiver." He has held that position for approximately 19 years and is responsible for receiving deliveries from various vendors, checking that the deliveries are correct, and completing paperwork and computer entries relating to the deliveries. On June 25, 2004, Blunden, who had never been a union official, called the Union office to request information about the upcoming, September 7, election for union officers. On June 28, two Union officials, Richard Power and Tom Radke, approached Blunden at his work station about his inquiries. Power was, at the time of the June 28 conversation, a part-time employee of the Union who had recently graduated college and was training to become a union business representative. Radke was the business representative who was training Power. Power would go to each store that he was overseeing for the Union 2 to 3 times per week. During these visits he would try to make sure that the employees knew he was present, and he would check the accuracy of the work schedules, which at the Sterling Heights store were posted close to Blunden's work station.

The question in this case is whether, during a June 28 conversation between Blunden and Power at the Sterling Heights store, Power threatened that Blunden would lose his job if he ran for union office. Some of what was said during that conversation is not in dispute, but the testimonies of Blunden and Power — the only witnesses at trial — diverge regarding the statements alleged to constitute a threat. The two witnesses agree that the conversation took place near Blunden's work station, that it began in the presence of Radke, and that no one was a witness to any part of the conversation other than those three individuals. According to the consistent testimony, Blunden requested information about the election for union officers, and Power asked Blunden whether he was thinking of running for union office and, if so, for what position. Before Power left, he and Blunden shook hands.

According to Power, that was essentially all there was to the June 28 conversation. Blunden, however, testified that quite a bit more was said. In Blunden's version, when he said that he might run for office, Power replied "I can't believe that." Radke commented, "The last guy that had run for Union office no longer works for Meijer's." [1] Then Power said: "Well, you do understand we have to do what we have to do. You do understand that the last guy that ran, we swamped him." Blunden responded that he was "planning on having the government keep an eye on the process" this time, and Power replied "Well, we crushed the other guy, even with the government watching." In Blunden's account, Radke exited the area, leaving Blunden alone with Power, and then Power said: "You know, you have to understand we have to do what we have to do. You know even if you run and you lose this, we still have to eliminate you." Power denied that he was ever alone with Blunden and that he made the threatening statements that Blunden attributes to him.

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[1] The General Counsel does not allege that Radke engaged in threats or other unlawful conduct. Originally, paragraph 8 of the complaint alleged that the threat was made by Radke; however, at the start of trial the General Counsel moved to amend paragraph 8 to substitute the name Rich Powers for the name Tom Radke. The Respondent did not oppose the motion, and I granted it. Prior to the close of trial, I granted the General Counsel's motion to amend the complaint to correct the spelling of Power's name from "Powers" to "Power."

I find that neither the record, nor the demeanor of the witnesses, provide a basis for crediting Blunden's account over Power's. The General Counsel provided no testimonial or documentary corroboration to bolster Blunden's account. To the contrary, the record shows that subsequent to June 28, Blunden reported to a manager that Radke had threatened him, but that Power was always civil, had pleasantly answered questions, and was never sarcastic. That statement does not square with Blunden's testimonial claims about what Powers said on June 28, and neither Blunden nor the General Counsel explains the discrepancy. Moreover, I consider it somewhat unlikely that Power would make statements to Blunden about having "swamped" the competition in the previous election given that Power had only recently started working for the Union and was not employed by the Union until long after the previous election.

The General Counsel argues that I should credit Blunden because he testified in greater detail than Power about the June 28 conversation. I agree that Blunden included more detail in his account. However, since Power denied that he and Blunden ever had the one-on-one discussion during which Blunden claims the threat was made, Power could not reasonably be expected to provide his own detailed account of such a discussion. Moreover, on close inspection, much of the detail included in Blunden's testimony does not ring true. The June 28 conversation, as reported by Blunden, includes an unusual number of non sequiturs and incoherencies. In addition, the same verbal tics -- – for example, prefacing statements with "as a matter of fact," or "well," – occur with improbable frequency when Blunden quotes what the various participants supposedly said during the June 28 conversation. That suggests to me that some of the detail Blunden provided was the product of imagination.

The General Counsel, citing *International Automated Machines*, 285 NLRB 1122 (1987), enfd. 861 F.2d 720 (6th Cir. 1988) (Table), argues that I should draw an adverse inference in favor of Blunden's account of what Power said because the Respondent did not call Radke to testify. However, even according to Blunden, Radke was not present when Power allegedly made the statement threatening Blunden with job loss. Since Radke was not a witness to the alleged exchange, his failure to testify about it does not give rise to an adverse inference.

For the reasons stated above, I conclude that the evidence does not show that, during the June 28 conversation with Blunden, Power more likely than not made a statement along the lines of: "You know, you have to understand we have to do what we have to do. You know even if you run and you lose this, we still have to eliminate you."[2]

B. The Complaint Allegations

The complaint alleges that the Respondent restrained and coerced employees' exercise of their section 7 rights in violation of section 8(b)(1)(A) of the Act when, on June 28, 2004, its agent, Richard Powers, threatened Russell Blunden, a union member, with loss of employment if he ran for union office.

[2] In addition to the June 28 conversation, the General Counsel elicited testimony from Blunden about a July 7 conversation with Radke and Power. The July 7 conversation is not covered by the complaint, and I see no way in which that conversation sheds any light on the question or whether a threat was made on June 28. Therefore, I make no findings regarding the July 7 conversation.

Analysis and Discussion

The Board has held that "the activities of employees . . . to oust the incumbent union leadership . . . are concerted activities protected by Section 7 of the Act." *International Union of Operating Engineers, Local 18 (Earl D. Creager, Inc.)*, 141 NLRB 512, 518 (1963). A union violates Section 8(b)(1)(A) of the Act if it threatens an individual with job loss in order to coerce him or her to abandon such activities. *International Union of Operating Engineers, Local 18 (C. F. Braun Co.)*, 205 NLRB 901, 914 (1973), enfd. 500 F.2d 48 (6th Cir. 1974); see also *Communication Workers Local 1101 (New York Telephone)*, 281 NLRB 413, 417 (1986) (union violates Section 8(b)(1)(A), by threatening employees with job loss to induce them to join the union). Evidence of the speaker's motivation is not necessary to show a violation, nor is evidence of the actual impact on an employee; rather the test is whether the statement in question would reasonably tend to coerce employees in the exercise of Section 7 rights. *Laborers Local 806*, 295 NLRB 941 n.2 (1989), enfd. 974 F.2d 1343 (9th Cir. Sep 02, 1992) (Table).

The General Counsel argues that the Union violated Section 8(b)(1)(A) when, on June 28, Power stated: "You know, you have to understand we have to do what we have to do. You know even if you run and you lose this, we still have to eliminate you." For the reasons discussed above, the record fails to establish that Power made the statement that the General Counsel alleges to be a threat of job loss. The General Counsel does not appear to contend that the remaining statements that it alleges Power made on June 28 rise to the level of an unlawful threat. At any rate, it is clear that the statements that Power was actually shown to have made did not include an unlawful threat.

I conclude that the allegation that, on June 8, 2004, the Respondent, through its agent Power, unlawfully threatened Blunden with loss of employment should be dismissed. [3]

[3] In its brief, the General Counsel challenges two of my rulings at trial. In the first ruling, I permitted the Respondent, over the General Counsel's objection, to elicit testimony from Blunden that, in hopes of overturning his defeat in the September 7 election, he filed numerous allegations with the Board and the U.S. Department of Labor even though he knew he had no evidentiary support for those allegations. The Respondent argued that the fact that Blunden had filed those allegations without evidence of their accuracy reflected negatively on his reliability in the instant proceeding since those allegations, like the ones in the instant case, were part of an attempt to overturn the election. After I permitted the testimony, the General Counsel served the Respondent with a subpoena seeking "All documents involving the Department of Labor charges or investigations by the Department of Labor involving [the Respondent] and or their agents Tom Radke or Rich Powers." In the second ruling challenged by the General Counsel, I granted the Respondent's petition to revoke that subpoena. For the reasons indicated at trial, I affirm my rulings regarding the testimony and the petition to revoke the subpoena. At any rate, Blunden's testimony about other allegations filed with the Board and the Department of Labor are not part of the basis for my decision not to credit portions of Blunden's testimony or for any of my findings of fact or conclusions of law in this case. Those determinations are based entirely on the reasons stated elsewhere in this decision.

Conclusions of Law

1. The Employer is engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.
2. The Respondent is a labor organization within the meaning of Section 2(5).
3. The Respondent was not shown to have committed the unfair labor practice alleged in the complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended Order.[4]

ORDER

The complaint is dismissed.

Dated, Washington, D.C. July 7, 2005

Paul Bogas
Administrative Law Judge

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.